SUPREME COURT, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

No. 87-1651

In The

Supreme Court of the United States

October Term, 1988

COMMONWEALTH OF MASSACHUSETTS,

Petitioner,

v.

DOUGLAS L. OAKES,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS

JOINT APPENDIX

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PETITION FOR CERTIORARI Filed April 1, 1988.
CERTIORARI Granted May 23, 1988.

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APPENDIX

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Commonwealth vs. Douglas L. Oakes
No. 85-107246

Offense: Soliciting A Child to Pose for Pornographic Purposes

Attorney: Penelope A. Kathiwala
340 Main Street
Worcester, MA

DATE		DOC. NO.	PROCEEDINGS
1985			
Jan.	9	1	Indictment
Mar.	21	6	Motion to Dismiss for Denial of Equal Protection and Unconstitutionality of the Statute, filed.
		7	Request for Report under Mass. R. Crim. P. 34, filed.
		8	Motion to Dismiss and Brief in support, filed in court.
Apr.	3	9	Memorandum in Opposition to Defendant's Motion to Dismiss, filed.
July	16	10	Memorandum and Order on Defendant's Motion to Dismiss be denied—(Mulkern, J.)—copy to D.A. & defendant's attorney.
Oct.	10	12	Verdict—Guilty
		11	Sentence: 10 years M.C.I. Concord, credit 1 day chapter 279, section 33A (Irwin, J.) Mittimus issued—returned 12/6/85.
Nov.	7	14	Notice of Appeal, filed—notified D.A. and Judge Irwin Certificate of Order of Transcript.
1986			
Feb.	7		Date of docketing in Appeals Court, A.C. No. 86-147.

May 1	Appellant Oakes' Brief filed.
June 27	Respondent Commonwealth's Brief filed.
Sept. 2	Order of Supreme Judicial Court transferring case from Appeals Court.
1988	
Feb. 1	Date of Decision.
Feb. 1	Date of Rescript.

85-107246

COMMONWEALTH

vs.

DOUGLAS L. OAKES

INDICTMENT.

SOLICITING A CHILD TO POSE FOR PORNOGRAPHIC PURPOSES

Worcester, ss. Superior Court, January Sitting A.D. 1985, Returned by Grand Jury. January 9, A.D. 1985 and filed by order of Court.

ATTEST,

/s/ John L. Connor
Ass't. Clerk.

85-107246

Commonwealth of Massachusetts
WORCESTER, ss.

Superior Court Department of the Trial Court, holden at — Worcester, within and for the County of Worcester, for the transaction of criminal business, on the first Monday of January in the year of our Lord one thousand nine hundred and eighty-five.

The Jurors for the Commonwealth aforesaid,
on their Oath Present

THAT Douglas L. Oakes of Leicester in said County of Worcester, on or about the first day of January in the year of our Lord one thousand nine hundred and eighty-four at Leicester in said County of Worcester, did with knowledge that a person is a child under eighteen years of age, or being in poseession of such facts that he should have reason to know that such person is a child under eighteen years of age, hire, coerce, solicit or entice, employ, procure, use, cause, encourage or permit such child to pose or be exhibited in a state of nudity, or to participate or engage in any act that depicts, describes or represents sexual conduct for purpose of visual representation or reproduction in any book, motion picture, film, photograph or picture.

A true bill,

/s/ (illegible)
Foreman.

/s/ (illegible)
Asst. District Attorney.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

Worcester, ss.		Superior Court Department Criminal No. 85-107246
COMMONWEALTH OF MASSACHUSETTS	)	
vs.	)	MOTION TO DISMISS
DOUGLAS OAKES Defendant	)	

Now comes Douglas Oakes, Defendant in the above matter, and moves this Honorable Court dismiss the above indictment as failing to state a crime.

As reason for his request, the Defendant states that:

1) The indictment, as drawn, fails to include all language set forth in the statute;
2) The most important omission is the word "knowingly";
3) The Commonwealth has added a comma after "state of nudity" and before "or to participate" which does not appear in the statute and substantially changes the nature of the crime or crimes alleged;
4) The indictment, as written, fails to state the crime proscribed by M.G.L. C. 272 § 29A.

DOUGLAS OAKES, Defendant
by his Attorney,

/s/ Penelope A. Kathiwala
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340 Main Street, Suite 910
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COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

WORCESTER, SS.	SUPERIOR COURT DEPARTMENT CRIMINAL
)	NO. 85-107246
COMMONWEALTH OF MASSACHUSETTS)	
)	REQUEST FOR
VS.)	REPORT
)	UNDER MASS.
DOUGLAS OAKES)	R. CRIM. P. 34
)	

Now comes the Defendant in the above entitled indictment and moves this Honorable Court, under the provision of Mass. R. Crim. P. 34 to report the issue of the constitutionality of M.G.L. c. 272 §§ 29A, 31 to the Appeals Court for determination.

As reason for his request, the Defendant states that:

1. The constitutional validity of these statutes is a case of first impression;
2. The statutes do not clearly indicate what conduct is proscribed and may, in fact, proscribe conduct commonly accepted in society;
3. A report may avoid the necessity of trial and appeal or dismissal;
4. The report represents a serious question of law which should be heard by the Appeals Court.

DOUGLAS OAKES, Defendant

By His Attorney,
/s/ Penelope A. Kathiawala
Penelope A. Kathiwala, Esq.
McGuire & McGuire
340 Main Street, Room 910
Worcester, MA 01608

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.	SUPERIOR COURT DEPARTMENT CRIMINAL ACTION NO. 85-107246
COMMONWEALTH OF MASSACHUSETTS VS. DOUGLAS OAKES	MOTION TO DISMISS FOR DENIAL OF EQUAL PROTECTION AND UNCONSTITUTIONALITY OF THE STATUTE

Now comes Douglas Oakes, Defendant in the above entitled matter and moves this Honorable Court dismiss the above indictment as being violative of the Fourteenth Amendment to the United States Constitution and analoguous provisions of the constitution of the Commonwealth of Massachusetts.

As reason for this request the Defendant states that:

1. M.G.L. c. 272 § 29A is unconstitutional on its face as applied to the defendant, depriving him of his right to equal protection of the law as guaranteed by the Fourteenth Amendment to the Constitution of the United States;
2. M.G.L. c. 272 § 29A deprives the defendant of equal protection of laws because there is no rational *basis* for enforcement of the statute;
3. M.G.L. c. 272 § 29A, as it incorporates definitions contained in M.G.L. c. 272 § 31 violates both the provisions of the First and Fourteenth Amend-

ments and the Constitution of the United States and the provisions of Articles I and XVI of the Declaration of Rights of the Constitution of the Commonwealth because it is unlawfully vague and ambiguous and overbroad.

Wherefore, the Defendant requests this Honorable Court dismiss the indictment.

DOUGLAS OAKES

By His Attorney,
/s/ Penelope A. Kathiwala
Penelope A. Kathiwala, Esq.
McGuire & McGuire
340 Main Street, Room 910
Worcester, MA 01608

PARTIAL JURY INSTRUCTIONS, Tr. 100-104

* * *

(p. 100) The second phase of my instructions deal specifically with the law that is involved in this one indictment. And I want to take a moment, if I can, to read the relevant section of that particular chapter of our General Laws. You notice that I described it as General Laws, Chapter 272, Section 29A. Do you have to be concerned or remember those numbers? Obviously not. We have all of our laws, for the most part in Massachusetts, codified. In other words, there are enactments of the legislature, and they are compiled and placed in volumes, and the volumes are numbered. They are numbered and they are placed in certain statutes, and we use chapters and we use sections, and so on and so forth.

Well, this is General Laws, Chapter 272, (p. 101) Section 29A. And the relevant parts of that statute for your consideration in this case reads as follows:

"Whoever with knowledge that a person is a child under eighteen years of age, or whoever while in possession of such facts that he should have reason to know that such person is a child under eighteen years of age, hires, coerces, solicits or entices, employs, procures, uses, causes, encourages, or knowingly permits such child to pose or be exhibited in a state of nudity . . . . shall be punished."

Let me ready [sic] that statute to you again in its relevant parts:

"Whoever with knowledge that a person is a child under eighteen years of age, or whoever while in possession of such facts that he should have reason to know that such person is a child under eighteen years of age, hires, coerces, solicits or entices, employs, procures, uses, causes, encourages, or knowingly permits such child to pose or be exhibited in a state of nudity . . . shall be punished."

That is the relevant statute, ladies and gentlemen, which is operative in this trial. And with respect to those relevant provisions, the government has to prove those to you beyond a reasonable doubt.

So, with respect to this statute, what does the government have to prove to you beyond a reasonable doubt before they can expect that you will convict the defendant of (p. 102) this charge? Well, first of all, they have to prove that he knew that the child allegedly involved in these photographs was in fact under the age of eighteen, or he has to have been in possession of such facts that he should have reasonably known that the child was under the age of eighteen.

Number two, if in fact the government has proved that beyond a reasonable doubt, they then have to prove that he either hired, coerced, solicited, or enticed, employed, procured, used, causes, encouraged, or knowingly permitted that child to be photographed in the nude, or in a state of nudity as I am going to define that to you.

Now, you will notice that the statute sets out a series of ways in which the defendant could be convicted of this crime. That is, you will notice that those operative words, such as hired, coerced, solicited, or enticed, employed, procured, used, causes, encouraged or knowingly permits, are all in a fair reading of that statute there in the disjunc-

tive. So, if the government proves that he did any of those things, any of those things, and has proved the other elements of this statute, then you would be warranted in finding that the defendant had violated this statute. The government is not required to prove all of those. The government may prove any combination of them, but of course must prove beyond a reasonable doubt at least one of them.

(p. 103) Now, what about nudity. You will notice it says, "Whoever with knowledge that a person is a child under eighteen years of age, or whoever while in possession of such facts that he should have reason to know that such person is a child under eighteen years of age, hires, coerces, solicits or entices, employs, procures, uses, causes, encourages, or knowingly permits such child to pose or be exhibited in a state of nudity . . ."

Now, later on, ladies and gentlemen, in that same statute, there is what we describe as a definition of the terms that are relevant to this particular statute; and I am going to read that definition to you as it relates to that thing that we describe as "a state of nudity".

Nudity, among other things, for the purpose of this statute, includes the uncovered, post-pubertal, post-pubertal, p-u-b-e-r-t-a-l, that means afer puberty, after the age of puberty, uncovered, post-pubertal human female breast below a point immediately above the top of the areola, shall be nudity for the sake of this particular statute, shall meet the definition of nudity.

Let me repeat that to you again. "Uncovered post-pubertal human female breast below a point immediately above the top of the areola."

So, ladies and gentlemen, those are the relevant elements of this particular statute that the (p. 104) government has to prove to you by the evidence, by the facts, and the inferences that you might draw from the facts, before they can expect you to convict the defendant. If the government has proved those allegations to you beyond a reasonable doubt, the government is entitled to have a verdict. If they have failed, then the defendant must be acquitted.

The statute provides, of course, that it is not a crime if in fact that nudity—and I want to take a moment to read this to you, if it appears that the, ". . . state of nudity was produced, processed, published, printed or manufactured for a bona fide scientific or medical purpose, or for an educational or cultural purpose for a bona fide school, museum or library," then in those circumstances, such nudity or depiction of nudity, would not be a crime.

So, the government, of course, based upon the evidence and all the inferences that you might draw from the facts established, has to prove beyond a reasonable doubt based on the evidence that you have heard, if there was any visual representation or reproduction of this girl under the age of eighteen in a nudity state as I have described that to you, but they would have to prove that it was not produced for an education or cultural purpose, or for a scientific or medical purpose.

PARTIAL TRIAL TRANSCRIPT, pp. 17-57

* * *

(p. 17) (Commonwealth's Opening Statement)

Mr. Ball: Thank you, your Honor. Madam Forelady, members of the jury, for the Commonwealth principably the evidence is going to come from one witness, her name is [L] [S], she lives in Leicester, and she is sixteen years old. She will tell you that Douglas Oakes was her stepfather at the time of the picture taking. She will tell you that they were living in Leicester, her mother lived there, Cynthia Oakes is her name. She had a brother and a couple of younger siblings. That they all lived out at 9 Ingram Road in Leicester.

That some time in September or thereabouts of 1983, she began modeling school. She was going to normal school or regular school, she also went to this modeling school here in Worcester, and she would have pictures taken there, and she will tell you she also did some modeling at home, and this was all at the suggestion of her stepfather, Douglas Oakes.

She will tell you in September and October, and November, into December, a series of pictures were taken by Douglas Oakes in various stages of dress, and various different articles of clothing she was wearing. Costumes, that type of thing, bathing suits, robes, things like that.

(p. 18) She will tell you that in January, on or about January 1st, some time in the early part of January, Douglas Oakes began taking pictures, and on one particular occasion he took pictures downstairs in the basement

of their house, or home, at 9 [sic] Ingram Road in Leicester; and she will describe the home, and she will tell you there was a bar in the basement area, it is affixed over the basement, and she was on the bar. She will tell you that she wasn't wearing anything but a pair of briefs, and a red scarf, and the rest of her body was nude. That Douglas Oakes was the only person in the house at the time the pictures were taken. And that he took a series of photographs of her.

She will tell you that those photographs she later saw in another occasion, and she ripped them up. Not totally, but she ripped them in half. And you will see those pictures that she had, and you will see the exact position that she was in. And she will tell you that Douglas Oakes is the one that posed her in those particular positions and took those pictures of her in the state of nudity, or partially nude.

That will be the evidence on behalf of the Commonwealth. At the conclusion of the evidence, all of the evidence, you will listen to the defense as well, be fair, you decide the case, decide the fact, and at the end of the trial the judge will instruct you on what the law is. You (p. 19) apply those facts of the law, and when you do, the Commonwealth will be requesting that you find the defendant, Douglas Oakes, guilty of this indictment. Thank you.

The Court: Ms Kathiwala.

(Defendant's Opening Statement)

Ms Kathiwala: Ladies and gentlemen of the jury, I would just be very brief in my opening. There is two things essentially that I would like to tell you. One is

that—and you all know that there is two sides to every story, or that the story that you may hear may be interpreted in many different ways, and that is one of the things I would like you to keep in mind throughout the course of this trial.

The other basic thing I would like to tell you about this is not too often in the case does the Commonwealth and the defense have the same major star witness, and this just happens to be one of those cases. We, the defense or the defendant, intends to show essentially what Mr. Ball has pointed out, but to show a few more, or different facts or facets of this case for you to keep in mind when you are deliberating about the law, and what the law is regarding posing in nudity by minors, and maybe perhaps what the intent of that law was.

But very briefly, what we hope to bring out, or show through the defendant's case, which will be partially put through using the Commonwealth witness, is that [L] (p. 20) [S] is, as she will testify, the stepdaughter of Mr. Oakes, and that she has lived with him for some twelve or fourteen years of her life. And we hope that she will also testify that some time in 1982, in the fall of 1982, and the spring of 19——strike that. The fall of '82 and the winter or New Year's of 1983, she entered into several contests, Miss Teen Magazine, she went on to different other contests, several of them, went to one at the Sheraton Lincoln, a beauty pageant which she won. She will also testify, I believe, she was on the Good Morning America show as a result of one of these beauty pageants and teen shows. And that she also not only did she attend modeling school, she attended dancing school. And

although you will see ten pictures of her in a partial state of nudity, we hope to show there were hundreds upon hundreds of photographs taken of her in all different types of outfits, modeling outfits, different clothing, what have you. And that not only did Mr. Oakes take some photographs of her, but Mrs. Oakes took photographs of her.

We hope to show also through the testimony on the defendant's side of the case, that after these photographs over a two and half year period of time were taken, ten of which you will see out of hundreds, that we allege were taken, an interesting thing happened. Some time in February of 1984, Miss [S] will tell you, "Well yes, (p. 21) those ten nude photographs were taken." And then in September, 1984, some nine or so months later, her mother filed for divorce against Mr. Oakes. And she will also testify that after September of '84, some nine months after the alleged photographs were taken, this complaint in November of 1984 was brought.

After hearing all of that evidence from the defendant's point of view, and after the Commonwealth and defense make our appropriate arguments—again, this is just an opening, an outline of the case, as the judge said—you will be instructed on some law. But remember, there are two sides to every story, and there are all facets of a tale that one has to hear before one can make a decision. So, please, keep an open mind. Thank you.

Mr. Ball: May I proceed, your Honor?

The Court: Yes.

Mr. Ball: Commonwealth calls [L] [S] to the stand.

[L] [S], a witness for the Commonwealth, was sworn and testified upon her oath as follows:)

DIRECT EXAMINATION

BY MR. BALL:

Q. You state your name, please?

A. [L [S].

Q. Where do you live?

(p. 22) A. 31 Ingram Road, Leicester.

Q. Who do you live there with?

A. My mother, Cynthia Oakes, my brother, Michael [S] and Lisa and David Oakes.

Q. How long have you lived there?

A. Eight years approximately.

Q. How old are you?

A. 16.

Q. What is your date of birth?

A. July 14, 1969.

Q. Do you recall where you were living in September of 1983?

A. Yes. 31 Ingram Road.

Q. Who was living with you there at that time?

A. All the same people, including Doug Oakes.

Q. Person you say is Doug Oakes, he is here today?

A. Yes.

Q. Where is he?

A. Sitting right there.

Q. How do you know him?

A. He is my stepfather.

Q. How long has he lived at your household?

A. Approximately seven years (crying).

Q. In September of 1984, did you begin some type of schooling?

A. Yes. Modeling school.

Q. At whose suggestion was that?

(p. 23) A. Doug's.

Q. Is that the first time that you had gone to this modeling school in September of 1983?

A. Yes.

Defendant Oakes: (Crying).

Q. Prior to that, had you attended any beauty pageants or anything like that?

A. Not before that till I attended modeling school.

Q. Where was that modeling school?

A. In Worcester on Park Ave, the LaFemmina Modeling School.

Q. How long did you attend that school?

A. Approximately a year.

Q. Is that a one-day thing a week or afternoon?

A. One day a week thing at nighttime.

The Court: When was that date again?

Q. Was that September of 1983?

A. Yes.

Q. How long did you attend that school?

A. Approximately a year.

Q. A year?

A. Yes.

Q. Till September of 1984?

A. Yes.

Q. During the course of that time—strike that. Between September, 1983, and January of 1984, did you do any other (p. 24) modeling besides modeling you did at the LaFemmina School?

A. Yes.

Q. What modeling was that?

A. Pornographic pictures, nude pictures.

Q. Did you do any other modeling?

A. Prior to modeling at the LaFemmina?

Q. Prior to January, between September and December, did you do some modeling? Were pictures taken of you?

A. Yes.

Q. Who took those pictures?

A. Doug Oakes.

Q. And between September and December of 1984, what type of pictures were taken?

A. Pictures with the jeans on, and body suits, and then went to nothing.

Q. About how many approximately? How many pictures were taken would you say?

A. I would say—

Q. More than a hundred?

A. Yes.

Q. More than two hundred?

A. Yes, sir.

Q. And some time in January of 1984, do you recall being in the basement of your house?

(p. 25) A. Yes.

Q. Who were you with in the basement of your house?

A. Doug Oakes.

Q. Can you describe the basement?

A. Yes. You go down my cellar stairs, to the left of you is a bar, in front of you is our living room set, to the right of you is the wash room.

Q. Downstairs the basement is a finished room?

A. Yes.

Q. Do you remember when that was in January? The first part of January, the latter part of January that you were down in the basement?

A. I would say during the middle of January.

Q. Who did you go there with, down into the basement with?

A. Doug Oakes.

Q. What happened when you went down into the basement?

A. Nude pictures were taken of me.

Q. Do you remember what you were wearing?

A. Yes. Red scarf and red and white striped underwear.

Q. Did you have anything else on?

A. No.

Q. How were those pictures taken?

A. On top of the bar.

Q. You got on top of the bar?

A. Yes.

(p. 26) Q. Is that at anyone's suggestion?

A. Yes.

Q. Whose?

A. Doug's suggestion.

Q. When you sat on the bar, what happened as soon as you sat on the bar?

A. Pictures were taken of me.

Q. Were you just sitting there on the bar?

A. I had to pose.

Q. How did you pose?

A. Numerous of ways.

Q. How did you determine which way to position yourself?

A. Cause Doug told me to turn a certain way.

Q. There was no one else in the room?

A. No.

Q. When you did turn a certain way on that occasion in January on the bar, he would do something?

A. Yes. He would take pictures of me.

Q. Some time after that session in your basement, the basement of your house, did you see some photographs?

A. Yes.

Q. Were they the photographs of that day?

A. Yes, they were.

Q. Did you do something with those photographs?

A. Yes.

(p. 27) Q. What did you do.

A. I ripped them up and I threw them in the back of the woods.

Q. Some time after that, did you see Douglas Oakes?

A. Yes, I did.

Q. After ripping up the photographs, where did you go?

A. I was over my girlfriend [C] [L]'s house.

Q. Did you see someone besides your girlfriend over there?

A. Yes.

Q. Who was that?

A. Doug.

Q. What happened when he came over?

A. He picked me up from [C]'s house, brought me home, and made me find the pictures in the back of the woods.

Q. You went out into the woods with him?

A. Yes.

Q. Was there any one else there?

A. No.

Q. When you went out into the woods, what did you do?

A. I had to find all of the pictures.

Q. You picked up some pictures back there?

A. Yes.

Q. What did you do with the pictures then?

A. We picked them up and we had to put them on the kitchen table and laid them out so they could dry.

Q. Was there any one else home at that time?

(p. 28) A. No.

Q. Did he say anything to you as you laid them out on the dining room table or kitchen table?

A. Yes. He asked me why I ripped them up.

Q. What did you say?

A. I told him I ripped them up because I didn't want them.

Q. What did he say?

A. "That cost a lot of money." He wanted to make me big for Playboy Magazine.

Q. Now, during that—at that time when you ripped up the pictures and he said that to you, was he still living at 19 Ingram Road?

A. 31 Ingram Road. Yes, he was.

Q. He was?

A. Yes.

Q. Some time after that, he and your mother were divorced now; is that right?

A. Yes.

Y. Some time after you saw the pictures drying out on the table at 31 Ingram Road, did you see them again, those same pictures?

A. Yes.

Q. Were they in a—what condition were they in when you saw them the next time?

A. They were ripped in half.

(p. 29) Q. You had done that?

A. Yes, I had.

Q. On the day that it was raining or damp out; is that right?

A. Yes.

Mr. Ball: May I approach the witness, your Honor?

The Court: Yes.

Q. I show you these photographs and ask you if you recognize them?

A. Yes. That is me.

Q. I will show you ten photographs. The first one you recognize?

A. Yes.

Q. The second one?

A. Yes.

Q. The third one?

A. Yeah.

Q. Fourth?

A. Yes.

Q. Fifth?

A. Yes.

Q. Sixth?

A. Yes.

Q. Seventh?

A. Yes.

(p. 30) Q. Nine?

A. Yeah.

Q. And ten?

A. Yes.

Q. Those are photographs that were taken on that day in the basement of your apartment?

A. Yes.

The Court: Have you seen those?

Ms Kathiwala: I have, Judge. No objection.

Mr. Ball: I would offer these ten photographs, your Honor.

The Court: All right. Do you have any objection to them being marked as one exhibit?

Ms Kathiwala: No Judge.

The Court: All right.

(Exhibit No. 1—See Index)

Mr. Ball: Proceed, your Honor?

The Court: Yes.

Q. Now, during the entire time that—between September and January of 1984, was any one else taking photographs of you besides the defendant and whoever was at LaFemmina School?

A. Yes.

Q. Who was that?

A. Peter Sims, my photographer from the LaFemmina Modeling School.

(p. 31) Q. Besides he and Douglas Oakes, any one else?

A. No.

Q. Did your mother ever take pictures of you at all?

A. No.

Q. Did your mother have a camera?

A. Nope.

Q. Did you have a camera?

A. No.

Mr. Ball: I have no further questions.

CROSS-EXAMINATION

BY MS KATHIWALA:

Q. Now, [L], are you sure your mother never took any photographs of you; is that correct?

A. Positive.

Q. Never took any at all?

A. Never.

Q. Now, [L], when you enrolled in the LaFemmina Modeling School, had you already submitted any applications to the Miss Teen America contest prior to that time?

A. No, not that I remember.

Q. You never entered into any contest submitting photographs prior to going to the LaFemmina Modeling School?

A. No. I started at the LaFemmina Modeling School first before the pageant.

Q. When did you start the Joanne Giguere Dance School?

(p. 32) A. I don't remember

Q. Was it during the same year?

A. Yes.

Q. And be fair to say that would be in 1983 you started the dance lessons?

A. Yes.

Q. By the way, you lived with your mother during that time; isn't that correct?

A. Yes.

Q. And your mother knew that you had all of these photographs taken of you by Douglas Oakes?

A. Not at the time, no, she didn't.

Q. So, it is your testimony that your mother never knew that he was taking all of those photographs of you; is that correct?

A. Yes.

Q. And let me ask you this. Did you ever see any photographs of you in a photo-album?

A. Yes.

Q. And it is your testimony your mother still never saw photographs of you?

A. Yes, she did, in the photo-album.

Q. And how many photographs would you say Mr. Oakes took of you starting in September of '83 and going up to February of '84 or after?

(p. 33) A. I would say approximately over 400 pictures.

Q. And where were the majority of these photographs taken?

A. In my basement at 31 Ingram Road on the bar and off the bar, standing aside of it.

Q. It is fair to say that is the family room, isn't it?

A. Yes.

Q. And the two little brothers and sisters, and your brother, Michael, they live with you, too, don't they?

A. Yes, they do.

Q. They come home from school during the day?

A. Yes, they do.

Q. Now, when did you enter into that pageantry at the Sheraton Lincoln Hotel?

A. I have no idea. I have been in many pageants.

Q. Well, isn't that the pageant that you won, the one at the Sheraton Lincoln?

A. I have never won any pageant.

Q. Can you tell us when you were on the Good Morning America show, what month and what year?

A. Approximately a year and half ago.

Q. What year would that have been, if you can remember?

A. End of 1984.

Q. Before or after those photographs, photographs without—

A. During.

Q. During that time?

(p. 34) A. Yes.

Q. Did your mother know you were on the Good Morning America show?

A. Yes, she did.

Q. And did your mother know that you were doing modeling or trying to be a model?

A. Yes.

Q. And it is fair to say that is the occupation that you wish to pursue?

A. Yes.

Q. And are you taking any other classes or dance-lessons to pursue that now?

A. No.

Q. Now, you testified that you found those photographs, those nude photographs in October or November; is that correct?

A. Yes.

Q. That is when you say you saw them?

A. Yes.

Q. And you testified that he took them in January or February of '84; is that correct?

A. Yes.

Q. So, the only time you ever saw them was ten months later; is that correct?

A. No. Doug showed me them earlier than that, after they came out of the Photo-Mat store.

(p. 35) Q. And you never saw them again; isn't that correct?

A. Exactly.

Q. You know if your mother saw them?

A. No, I don't.

Q. Your mother never talked to you in July of 1984 about the pictures?

A. She asked me what was going on, and I lied to her, and I told her nothing was going on.

Q. So, you told her nothing?

A. Yeah.

Q. And she said nothing?

A. She said, "I feel that something is going on, [L]," and I said, "There is nothing going on."

Q. Okay. So, she never showed you any pictures in July of '84; is that correct?

A. Exactly.

Q. That were in the bedroom closet?

A. No.

Q. Now, you said that you found those pictures in October or November of '84. You also just testified that Mr. Oakes was living in Leicester; isn't that correct?

A. Yes.

Q. You weren't living there though, were you, ma'am?

A. No.

Q. And your mother wasn't living there, was she?

(p. 36) A. No.

Q. Neither were your brothers and sisters, were they?

A. Right.

Q. They had all left; isn't that correct?

A. Yes.

Q. And your mother had already filed for divorce; isn't that correct?

A. Yes.

Q. Some time in November you brought these pictures to Officer Berry of the police department, didn't you?

A. Yes.

Q. Did you bring here any of your other photo-albums with the hundreds of pictures that were in them?

A. No. Because I didn't have any. He took them.

Q. Ma'am, please answer my questions. Don't elaborate. Did you bring those with your mother?

A. Yes.

Q. Who had those pictures, you or your mother?

A. Neither one of us did. They fell out of the ceiling.

Q. Fell out of the ceiling?

A. Yes. From downstairs in my basement. We have pop up ceilings, and they fell out, and my brother found them.

Q. And it is your testimony, ma'am, other than Peter Sims of the LaFemmina Modeling Studio, and people at LaFemmina, and Mr. Oakes, no one else took any pictures of you; is (p. 37) that correct?

A. Right. No one took any pictures of me.

Q. And your mother never knew anything about all of this?

A. She knew I was into modeling. But she never took any pictures of me.

Q. Never did?

A. Never.

Ms Kathiwala: Nothing further.

Mr. Ball: Just a couple on redirect, your Honor.

The Court: Go ahead.

REDIRECT EXAMINATION

BY MR. BALL:

Q. When you say your mother didn't know about the pictures, you are referring to the nude pictures?

A. Exactly.

Q. She did know about all the ones in the bathing suit and the dresses, and the jeans and all of that?

A. Yes.

Q. The photo-album; is that correct?

A. Yes.

Q. When was the last time you saw those hundred or so pictures that Douglas Oakes took of you in the jeans and the nightgown, and that type of thing?

A. Well over a year.

(p. 38) Q. Where were they the last time you saw those?

A. Underneath my chest in my parlor, that is where they were kept.

Q. Did you at some time learn that Doug Oakes had those photographs?

A. Yes.

Q. Did you ask him for them back?

A. Yes.

Q. Did you get them back?

A. No.

Q. Have you still tried to get them back?

Ms Kathiwala: Object.

The Court: She can testify to that.

Q. Have you tried to get them back?

A. Yes. And I can't get them back. I don't know why.

Mr. Ball: I have no further questions of the witness.

The Court: Anything else?

Ms Kathiwala: Nothing further, your Honor.

The Court: All right. Thank you. We'll stop and take a brief, just a brief recess, five or ten minutes, and we will pick the trial up.

(MORNING RECESS)

(p. 39) (Reconvened at 12:20 P.M.)

The Court: Please be seated.

Mr. Ball: Your Honor, the Commonwealth rests.

The Court: All right.

Ms Kathiwala: May I proceed, Judge?

The Court: Yes.

Ms Kathiwala: Like to call Cynthia Oakes to the stand.

(CYNTHIA OAKES, A WITNESS FOR THE DEFENDANT, WAS SWORN AND TESTIFIED UPON HER OATH AS FOLLOWS:)

BY MS KATHIWALA:

Q. Mrs. Oakes, for the court, would you state your name and address?

A. Cynthia Oakes, 31 Ingram Road, Cherry Valley, Mass.

Q. Ma'am, you are the mother of [L] [S]?

A. Yes, I am.

Q. And are you formerly married to Mr. Douglas Oakes?

A. Yes, I was.

Q. And how long were you married, ma'am?

A. Eight years.

Q. And how long had you lived with Mr. Oakes?

A. Thirteen and half years.

Q. Thirteen and half years?

A. Yes.

Q. And did your children, [L] [S] and [M] [S], (p. 40) live with Mr. Oakes along with you those thirteen and half years?

A. Yes, they did.

Q. And some time, ma'am, you filed for divorce. Do you recall when that was?

A. Yes.

Q. Do you know the month?

A. Yes. September.

Q. Of what year, ma'am?

A. '84.

Q. Now, drawing your attention to some time around September of 1983, do you recall if your daughter, [L] [S] started attending modeling school?

A. She had attended a modeling school, yes.

Q. And do you recall if some time during that year she went and had some photographs taken at the office of a Mr. Sims?

A. Yes. But not in his office. His office is in the modeling school. It is at LaFemmina. He doesn't have a separate office.

Q. And do you recall if it was you who called to make the appointment?

A. It could have been. I am not sure. Yes, in fact, I think it was, because Karen Shea had suggested it.

Q. And do you recall if it was you, ma'am, who enrolled [L] in the Joanne Giguere Dance School?

(p. 41) A. Yes, I think it was.

Q. Do you recall when that was?

A. End of '83. I think it was the end of '83. Because she was in some kind of a recital. I think the end of the year or the beginning of '84. I think it was the end of '83.

Q. And do you recall, ma'am, if Miss [S], prior to entering the LaFemmina Modeling School, had enrolled in any beauty pageants?

A. Yes.

Q. And when was that? What year did she start enrolling in the beauty pageants?

A. It was the beginning of—it was August of '83 or August of '82. I am not sure. She enrolled in a Miss Teen America Pageant.

Q. Before she went into the modeling school or the beauty school?

A. Yes.

Q. And did you ever accompany her to any of these pageants?

A. Yes.

Q. And did you go alone or did you go with any one else, besides [L]?

A. We went with Doug Oakes.

Q. Did you ever bring any of your other children?

A. The first one, no. They came at the end.

(p. 42) Q. Do you recall going with her to the Good Morning—when she was on the Good Morning America Show?

A. Yes.

Q. And were you alone or with any one else besides [L]?

A. Doug Oakes.

Q. Now, during the time—strike. Do you know how many beauty pageant shows your daughter entered?

A. About three, maybe four.

Q. And during that time, Mr. Oakes was taking photographs of her; is that correct?

A. Yes.

Q. And during that time, ma'am, were you ever taking any photographs of her?

A. I didn't take any photographs of her. On occasion when Doug Oakes would take photographs, I was there for her portfolio. They say that they needed certain outfits, certain clothing, skirts, dresses.

Q. So, you never used a camera and took any photographs; is that correct?

A. Not for [L]'s portfolio, no.

Q. How about [L] just modeling or doing some posing?

A. Yeah, a couple in her gown to see how it looked.

Q. Well, I would ask you, ma'am, if you recall ever taking any photographs of what would be considered the flash dance pose?

(p. 43) A. No, I didn't take those pictures.

Q. Did you ever take any pictures like that?

A. No.

Q. Did you ever take any photographs of [L] in black and white color?

A. I don't understand?

Q. Rather than—

A. Black and white clothes?

Q. Black and white, the picture of black and white?

A. Picture of black and white. Oh, maybe a couple, but not a full roll of film. Maybe just a couple to see how they would come out. Because Mr. Sims had suggested that the black and white is better for a portfolio than color.

Q. So, in any event, you took some black and white, and you took some colors; is that correct?

A. Right. But in a complete roll, one or two.

Q. And where would you take these photographs, ma'am? Would they be in any particular room in the house?

A. Yeah. The parlor.

Q. And where is the parlor? Is that the downstairs room?

A. No, upstairs.

Q. Did you ever take any photographs downstairs in the family room, bar area?

A. No.

Q. Never did?

(p. 44) A. No.

Q. Did you ever view any photographs taken down there? In other words, were you ever present when photographs were being taken with [L] down there?

A. Once.

Q. And that was during the year 1983 and '84?

A. Right.

Q. And at some time, ma'am—well, strike that. Did you ever have discussions or occasions to have conversation with Mr. Oakes about [L]'s modeling career, yes or no?

A. Yes.

Q. And did you ever have any conversation with [L] about her being a model?

A. Yeah.

Q. And how many times, or over that period of a year, how many times would you discuss her becoming a model?

A. With who?

Q. [L].

A. Whenever the sun came up, when ever she or I got into the discussion of her modeling, and does she want to attend any more classes, does she think she had enough classes. It would be a few times.

Q. And did she ever win any one of these pageants?

A. No, she won a scholarship.

Q. Was that the Medfield Pageant Scholarship that she won?

(p. 45) A. No. It was the Sheraton—maybe it was Medfield. It was at the Sheraton. I can't remember what town it was in, but off of 495, I guess.

Q. Did you go with her to these pageants?

A. Yes.

Q. Were most of these Miss Teen America pageants, ma'am?

A. One was. And this other one was—I don't know what the exact name of it was. It had some kind of a name.

Q. Okay. Now, directing your attention to some time around July of 1984, do you recall that month, ma'am?

A. Yes, I do.

Q. Do you remember if some time in that month you found some pictures?

A. Yes, I do.

Q. And are those the nude pictures you found that you have seen?

A. No, no.

Q. Where were these pictures, ma'am?

A. They were in a safe that was in my bedroom close that kept a lot of personal papers and stocks for the children.

Q. After you found those pictures, did you have any conversation with [L] about them, yes or no?

A. Yes.

Q. And did you show her the pictures, yes or no?

A. No.

(p. 46) Q. Did you tell her you had any pictures?

A. I told her I had found something that was very upsetting—

Q. No. Did you tell her you had any pictures?

A. I told her I had found pictures.

Q. All right. And you had some conversation with her about the pictures?

A. Yes, I did.

Q. But you never showed the pictures?

A. No. I put them back.

Q. Okay. Then you put them back in the safe; is that correct?

A. Yes.

Q. And did you have any conversation in July of '84 when you found the pictures with Mr. Oakes?

A. No.

Q. Okay. And you were married to Mr. Oakes in July of 1984; isn't that correct?

A. Yes, I was.

Q. And some time, ma'am, in September of 1984, you filed for divorce; isn't that correct?

A. Yes, I did.

Q. And after September of 1984, you went to the police with the pictures, and you filed a complaint?

A. (No response).

Q. Do you recall—

A. Yes, I went to the police. But we didn't have all of the (p. 47) pictures that we have now.

Q. Ma'am, the pictures—

A. Yes.

Q. —that you brought to the police were in November?

A. Yes.

Q. And some time, ma'am, in September of '84, after you filed for the divorce, weren't you ordered out of the house by the judge?

Mr. Ball: Objection.

The Court: That objection is sustained.

Q. In October or November when those pictures were brought to the police, you weren't living in the house; isn't that correct?

A. No, I was living with my mother.

Q. Ma'am, yes or no—

A. Yes.

Q. —you weren't living in the house?

A. No, I was not living in the house.

Q. And [L] wasn't living in the house?

A. No, she wasn't.

Q. And it is your testimony, ma'am, you never took any of those flash dance pictures?

A. No, I didn't.

Ms Kathiwala: Nothing further.

The Court: Mr. Ball.

(p. 48) CROSS-EXAMINATION

BY. MR. BALL:

Q. Ma'am, it was Douglas Oakes's idea that your daughter begin to model and go to these dance classes; isn't that right?

A. Yes, it was.

Q. And that was because Douglas Oakes told you, as he told your daughter, that she was a very good looking young woman, and that she could be in pageants at some point; is that right?

A. Yes.

Q. The pictures that you found in July of 1984, were not the ten or the portions of the ten photographs that—

A. No, they weren't.

Q. You do know those photographs that I am referring to were introduced into evidence, right?

A. Yes, I do.

Q. The photographs that you saw in the safe were not nude photographs, were they?

A. They weren't totally nude. They were like when you first have a camera and you don't know how to run it, the color was like yellow, gold, there was no real color to it. In other words the film, something was wrong with it. And this was just about the time that Douglas had just bought a 35 millimeter camera, and they were like poor quality. (p. 49) But the ones that were found after were perfect.

Q. When you found those photographs, you did speak to [L] about it?

A. Yes.

Q. And she told you that no, nothing is going on, you know we have stopped doing that, or something to that effect; is that right?

A. Yes.

Q. And it was some time after that, some time in September, or—strike that. How often was it, or what period of time expired when you went to the police with these nude photographs, and you found some other ones at the house, or found those ones at the house?

A. I had found the first group in July. I had filed for divorce in September. I had moved out of the house willingly in the 1st of October with the children. [L] was staying at her friend's because she couldn't live in Worcester with me at my mother's and attend Leicester School. [L] broke down, I guess, at her friend's house—

Ms. Kathiwala: I object. May the answer to the question—

A. It was November.

The Court: Wait just a moment. That objection is sustained.

Q. Just when did you find those pictures that were introduced, (p. 50) ma'am, or when were they found?

A. In November.

Q. And how soon after finding those did you go to the police with them?

A. That night.

Mr. Ball: I have no further questions.

Ms Kathiwala: Nothing further of this witness, your Honor.

The Court: All right. Thank you.

Ms Kathiwala: Douglas Oakes, please.

(DOUGLAS LOUIS OAKES, THE DEFENDANT, WAS SWORN AND TESTIFIED UPON HIS OATH AS FOLLOWS:)

DIRECT EXAMINATION

BY MS KATHIWALA:

Q. What is you name, sir?

A. Douglas Louis Oakes.

Q. Where do you live, sir?

A. 3 Fisher Road, Holden.

Q. Sir, are you the stepfather of [L] [S]?

A. Yes, I am.

Q. The former husband of Cynthia Oakes who just testified?

A. Yes.

Q. And tell us, sir, 1983 were you married to Mrs. Oakes?

A. Yes, I was.

Q. And how long have you been married to her?

(p. 51) A. Since 1976.

Q. And how long have you been with Mrs. Oakes?

A. Since '71.

Q. And had her children been living with you all of that time, sir?

A. Yes, they were.

Q. And you have known these people how many years altogether now, sir?

A. 25. Well, I knew—I knew my wife before the children were born, because she was previously married.

Q. Some time they came to live with you. How old was [L] [S]?

A. I think she was only six months old. Or maybe three months. She was just born maybe. No, she was under a year old.

Q. And you knew her, sir,—did she live with you continuously from when she was three or six months old up to September or October of 1984?

A. Yeah. I brought them up.

Q. And drawing your attention, sir, to some time around September of 1983, do you recall that time?

A. Yes.

Q. Did you have occasion to have any discussion with Cynthia Oakes and [L] [S] concerning her going to modeling school, just yes or no?

(p. 52) A. Yes.

Q. And did you have some discussions with Cynthia Oakes about it, your wife?

A. Yes.

Q. And was [L] [S] present?

A. Yes.

Q. And any one else present?

A. Maybe the smaller, you know, the smaller kids were there. I don't know if [M] was there.

Q. Was this in your house or somewhere else?

A. It was at the kitchen table.

Q. Where was this at? What address?

A. 31 Ingram Road, Cherry Valley.

Q. And after that discussion, sir, was Miss [S] enrolled in the LaFemmina School?

A. Yes.

Q. And after that discussion, sir, was Miss [S] enrolled at the Joanne Giguere School of Dance?

A. She didn't go to the Joan Dance School until after all the modeling and after all the pageants that she was already in. That was the last thing she was to do before she entered any more pageants.

Q. And did Miss [S] also attend another modeling school?

A. Yes.

Q. What school was that, sir, if you know?

(p. 53) A. Leicester High School.

Q. And sir, how many pictures—strike that. When did you start taking pictures of Miss [S]?

A. It was either the—the end of '82 and '83 when they cut out a piece of advertisement in the paper that was for Miss Teen America, and that was going to be held at the Sheraton, I believe, in Framingham.

Q. Did you cut that out or did someone else?

A. [L] cut it out.

Q. And did you enroll [L] in the Miss Teen Pageant, Miss Teen America Pageant?

A. The mother, my wife, ex-wife enrolled her.

Q. And did you enroll Miss [S] in LaFemmina Modeling School?

A. No.

Q. And did you tell Miss [S] you were going to take photographs of her?

A. Yes.

Q. Did you ask her or did you tell her?

A. No, I asked her. I asked her if she wanted to do it, is this what she wanted to do.

Q. And what did she say to you?

A. "That is what I want to be. I want to be a model."

Q. A what?

A. A model.

(p. 54) Q. And how many photographs, sir, of Miss [S] of that year and half would you estimate you took?

A. Maybe a thousand.

Q. And did you create any photo-album?

A. There was—I created two myself, and they created one themselves, you know.

Q. And any of those photo-albums called portfolios?

A. Yes. One was—the one they made was a portfolio.

Q. And did Cynthia Oakes ever take photographs of [L] [S]?

A. Yes, she did.

Q. And was Cynthia Oakes present on any occasion when you were taking photographs of [L] [S]?

A. Yes, she was.

Q. And when were these photographs taken, by the way, sir, at all different times of the day or was there a certain time of day?

A. No. They were all numerous different—you know, some could have been in the morning, some in the afternoon. I don't think any of them were ever taken at night. It was basically during the day or on weekends, you know. I don't know exactly the time, you know.

Q. And you have two little children also, sir, do you not?

A. Yes, I do.

Q. And what are their names?

(p. 55) A. Lisa and David.

Q. Were they home when these photographs were taken, sir?

A. Yes, they were.

Q. And photographs were taken in the home, sir?

A. Yes, they were.

Q. Were there any photographs ever taken anywhere away from the home?

A. At the pageant. And I think at different—in parks we took pictures.

Q. Did Mrs. Oakes every go with you?

A. Yes, she did.

Q. And did you ever have conversations with [L] [S] and Mrs. Oakes about her modeling?

A. Yes, I did.

Q. And did [L] [S] ever ask you to take pictures of her?

A. Yes, she did.

Q. Did [L] [S] ask you ever to create these portfolio albums?

A. Yes, she did.

Q. And isn't it true, sir, that Karen LaFemmina of the LaFemmina Modeling Studio, wanted these portfolio albums?

A. Yes.

Q. And isn't it also a requirement, sir, to enter these beauty pageants, that you have to submit photo portfolios?

(p. 56) A. Yes, it is.

Q. Who would make up those portfolios, sir?

A. Well, unless you had—that is why they decided to get a professional, too, to make up some pictures also.

Q. And was that Mr. Sims?

A. Yes, it was.

Q. And who called Mr. Sims?

A. My wife, ex-wife.

Q. Cynthia Oakes?

A. Yes.

Q. And did [L] go to see Mr. Sims?

A. Yeah. One night they went. No, they went more than one night. They went about five different times.

Q. How many times did you go?

A. I only picked her up. I didn't go. Because he didn't want me there. He said he wanted [L] by herself.

Q. Now, sir, you saw those ten photographs?

A. No, I didn't.

Ms Kathiwala: May I approach the witness, your Honor?

The Court: Sure.

Q. Sir, take a look at these.

A. (Complying).

Q. You recognize those, sir?

A. Yeah. I have seen some of them.

(p. 57) Q. Did you take these photographs, sir?

A. Not those.

Q. You didn't take these photographs?

A. Nope.

Q. Do you know who did take those photographs?

A. Well, if it wasn't me, it had to be my wife.

Mr. Ball: Objection.

The Court: Well, that answer is excluded. He can testify who took the photographs, not who he might speculate.

A. Oh, okay.

Q. And when is the first time you seen those photographs, sir?

A. Just now.

Q. Sir, some time in September of 1984, do you recall that month?

A. September of what, excuse me?

Q. September of 1984.

A. Right.

Q. Do you recall that month? Do you recall what happened in that month?

A. (Nodding).

Q. What happened?

A. Got a divorce.

Q. And do you recall November of 1984, sir?

A. Yes, I do.